

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
JOSE ZAMBRANA,

Index No.:

Plaintiff,

COMPLAINT

-against-

THE CITY OF NEW YORK, THE NEW YORK CITY
POLICE DEPARTMENT, POLICE OFFICER
ANTHONY DISIMONE and JOHN DOES-Police
Officers as yet unidentified,

Defendants.
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Plaintiff, by his attorneys, RUBENSTEIN & RYNECKI, ESQS., complaining of the
defendants herein, upon information and belief, respectfully shows to this Court, and alleges as
follows:

**AS AND FOR A FIRST CAUSE OF ACTION FOR ASSAULT
AND BATTERY ON BEHALF OF JOSE ZAMBRANA**

1. That at all times hereinafter mentioned, plaintiff was and still is a resident of the
County of Bronx, City and State of New York.
2. That all times hereinafter mentioned, the defendant, THE CITY OF NEW YORK,
was and still is a municipal corporation, duly organized and existing pursuant to the laws of the
State of New York.
3. That the defendant, THE CITY OF NEW YORK, maintains a police force known
as the NEW YORK CITY POLICE DEPARTMENT.
4. That prior hereto on December 27, 2011, and within the time prescribed by law,
a sworn Notice of Claim stating, among other things, the time when and place where the injuries
and damages were sustained, together with plaintiff's demands for adjustment or payment thereof,
and that thereafter the CITY OF NEW YORK refused or neglected for more than (30) days and
up to the commencement of this action to make any adjustment or payment thereof, and that
thereafter, and within the time provided by law, this action was commenced.

5. That on February 21, 2012, pursuant to the General Municipal Law, a Statutory 50- H hearing was held.

6. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, employed POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, as agents, servants and/or employees.

7. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, the plaintiff, JOSE ZAMBRANA, was lawfully inside the premises located at 1050 Lowell Street, specifically Apartment 4B, County of Bronx, City and State of New York.

8. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, the plaintiff, JOSE ZAMBRANA, was assaulted by defendants, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, while acting as agents, servants and/or employees of the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT.

9. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, the aforementioned assault and battery was performed knowingly, intentionally and willfully.

10. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief the defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, who committed the aforementioned assault and battery upon the plaintiff, JOSE ZAMBRANA, were acting within the scope of their employment with the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT.

11. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, the assault and battery on the plaintiff was without probable cause and

was not the result of an appropriate arrest.

12. By reason of said assault and battery the plaintiff was caused to suffer severe and serious injuries in and about diverse parts of the person, and suffered great pain, distress, mental shock, mental anguish and psychological trauma and was otherwise injured.

13. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A SECOND CAUSE OF ACTION FOR
NEGLIGENCE ON BEHALF OF JOSE ZAMBRANA**

14. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "13" inclusive with the same force and effect as if more fully set forth at length herein.

15. The defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, were negligent, reckless and careless in assaulting, battering and in violating the civil rights of the plaintiff, JOSE ZAMBRANA.

16. As the result of said negligence, the plaintiff, JOSE ZAMBRANA, became sick, sore, lame and disabled, received severe and serious injuries in and about diverse parts of the person and suffered great physical pain, distress, mental shock, mental anguish and psychological trauma and was otherwise injured.

17. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENT
HIRING AND RETENTION ON BEHALF OF JOSE ZAMBRANA**

18. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "17" inclusive with the same force and effect as if more fully set forth at

length herein.

19. Defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, did not exercise reasonable care and diligence in the selection, engagement, employment and training of their agents, servants, and employees and were negligent in the hiring, training and retention of the defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, who assaulted, battered and violated the civil rights of the plaintiff, JOSE ZAMBRANA.

20. That the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, had prior knowledge of the inappropriate, unlawful, and improper conduct of the defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, and continued to employ them and allowed them to be in contact with the public at large.

21. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR FALSE
ARREST ON BEHALF OF JOSE ZAMBRANA**

22. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "21" inclusive with the same force and effect as if more fully set forth at length herein.

23. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, the defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, were working within the scope of their employment and authority with defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, when they arrested and confined the plaintiff, JOSE ZAMBRANA.

24. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, the arrest and confinement was without probable cause nor based on reasonable grounds and not founded upon an arrest warrant.

25. That as a result of the aforesaid false arrest and confinement, plaintiff, JOSE ZAMBRANA, sustained serious permanent personal injuries along with humiliation, shame, indignity, damage to reputation and credit and suffered emotional and physical distress and injuries.

26. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR FALSE
IMPRISONMENT ON BEHALF OF JOSE ZAMBRANA**

27. The plaintiff repeats and realleges each and every allegation set forth above numbered "1 through "26" inclusive with the same force and effect as if more fully set forth at length herein.

28. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, were acting within the scope of their employment when they, without justification and without probable cause, imprisoned the plaintiff.

29. That defendants POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, while acting within the scope of their employment, intentionally confined the plaintiff against his will and said confinement was not privileged.

30. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A SIXTH CAUSE OF ACTION FOR INTENTIONAL
AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
ON BEHALF OF JOSE ZAMBRANA**

31. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "30" inclusive with the same force and effect as if more fully set forth at length herein.

32. The defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, acted intentionally, recklessly and with utter disregard to the consequences of their actions and caused severe emotional distress to the plaintiff through their actions.

33. Said actions exceeded all reasonable bounds of decency, were outrageous and shocking and resulted in severe emotional distress to the plaintiff, JOSE ZAMBRANA.

34. That as a result of said intentional and negligent acts, the plaintiff, JOSE ZAMBRANA, become sick, sore, lame and disabled, received severe and serious injuries in and about diverse parts of his person and suffered great physical pain, distress, mental shock, mental anguish and psychological trauma and was otherwise injured.

35. By reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A SEVENTH CAUSE OF ACTION FOR MALICIOUS
PROSECUTION ON BEHALF OF JOSE ZAMBRANA**

36. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "35" inclusive with the same force and effect as if more fully set forth at length herein.

37. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, within the scope of their employment, without

justification, without probable cause, created and submitted an erroneous police report in an effort to cover up the aforesaid and initiate a prosecution in bad faith.

38. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, defendants, POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, were acting within the scope of their employment, maliciously prosecuted the plaintiff.

39. That on December 15, 2011, and at all times hereinafter mentioned and upon information and belief, as a result of the aforesaid malicious prosecution, plaintiff sustained serious, permanent, personal injuries along with humiliation, shame, indignity, damage to reputation and credit, legal fees, loss of employment opportunities and suffered emotional and physical distress and injury.

40. By reason of the foregoing, plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR AN EIGHTH CAUSE OF ACTION FOR CIVIL
RIGHTS VIOLATION ON BEHALF OF JOSE ZAMBRANA**

41. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "40" inclusive with the same force and effect as if more fully set forth at length herein.

42. The defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, were acting under the color of law and within the scope of their authority, assaulted and battered the plaintiff JOSE ZAMBRANA, in violation of 42 U.S.C.A. section 1983 as well as other applicable state and federal laws.

43. The defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, acting under color of law and within the scope of their authority, deprived the plaintiff, JOSE ZAMBRANA of liberty without

due process and without reasonable cause in violation of 42 U.S.C.A. Section 1983 as well as other applicable state and federal laws.

44. The defendants had deprived the plaintiff by their actions of his civil rights as guaranteed by statute.

45. That the assault and battery was in violation of the civil rights of the plaintiff, more particularly, 42 U.S.C.A. Section 1983 as well as other applicable state and federal laws.

46. That the deprivation by the defendants of plaintiff's civil rights was a result of said defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, acting under color of law and within their authority as law enforcement officers within the employ of defendants, THE NEW YORK CITY POLICE DEPARTMENT.

47. That the defendants' actions were not privileged or immune.

48. That the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, including but not limited to POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, were not acting with immunity when they deprived plaintiff of his civil rights.

49. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

**AS AND FOR A NINTH CAUSE OF ACTION FOR
PUNITIVE DAMAGES ON BEHALF OF JOSE ZAMBRANA**

50. The plaintiff repeats and realleges each and every allegation set forth above numbered "1" through "49" inclusive with the same force and effect as if more fully set forth at length herein.

51. The actions of the defendants herein-above alleged, were malicious, willful and grossly negligent.

52. The defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, authorized, permitted and ratified the unlawful and negligent acts of their agents, servants and/or employees, including but not limited to defendants POLICE OFFICER ANTHONY DISIMONE and JOHN DOES-Police Officers as yet unidentified, herein-above alleged.

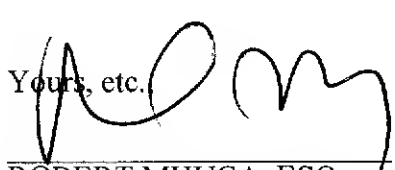
53. By the reason of the foregoing, the plaintiff, JOSE ZAMBRANA, sustained damages in an amount exceeding the jurisdictional limits of all the lower Courts.

WHEREFORE, plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **First** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Second** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Third** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Fourth** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Fifth** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Sixth** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Seventh** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts on the **Eighth** Cause of Action; plaintiff, JOSE ZAMBRANA, demands judgment both compensatory and exemplary in an amount exceeding the jurisdictional limits of all lower Courts

on the **Ninth** Cause of Action; together with attorneys' fees, and the costs and disbursements of this action.

DATED: Brooklyn, New York
April 6, 2012

Yours, etc.



ROBERT MIJUCA, ESQ.
RUBENSTEIN & RYNECKI, ESQS.
Attorneys for Plaintiff
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File No.: 11JZ12-15

ATTORNEY'S VERIFICATION BY AFFIRMATION

ROBERT MIJUCA, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at RUBENSTEIN & RYNECKI, ESQS., attorneys of record for the Plaintiff/Plaintiffs, I have read the annexed

SUMMONS AND COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason I make the foregoing affirmation instead of the Plaintiff/Plaintiffs is because the Plaintiff/Plaintiffs is/are not presently in the County wherein the attorneys for the Plaintiff/Plaintiffs maintain their offices.

Dated: Brooklyn, New York
April 6, 2012


ROBERT MIJUCA, ESQ.